

ESTTA Tracking number: **ESTTA381361**

Filing date: **12/01/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	K.Y.L. Natural Health Products, Inc.
Granted to Date of previous extension	12/01/2010
Address	252-75 Brattle Avenue Little Neck, NY 11362 UNITED STATES
Attorney information	Thomas J. Menard Alix, Yale & Ristas, LLP 750 Main Street Suite 1400 Hartford, CT 06103 UNITED STATES tmenard@pctlaw.com Phone:8605279211

Applicant Information

Application No	77905101	Publication date	08/03/2010
Opposition Filing Date	12/01/2010	Opposition Period Ends	12/01/2010
Applicant	Y.L.L. HIGHCLASS HEALTHY PRODUCTS USA INC. 148-14 35TH AVENUE, 2/FL FLUSHING, NY 11354 UNITED STATES		

Goods/Services Affected by Opposition

Class 005.


All goods and services in the class are opposed, namely: Amino acids for nutritional purposes; Dietary and nutritional supplements; Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; Dietary food supplements; Dietary supplement for eliminating toxins from the intestinal tract; Dietary supplemental drinks; Dietary supplemental drinks in the nature of vitamin and mineral beverages; Dietary supplements; Dietary supplements for controlling cholesterol; Dietary supplements for human consumption; Food supplements, namely, anti-oxidants; Health food supplements; Herbal supplements; Liquid nutritional supplement; Meal replacement and dietary supplement drink mixes; Mineral food supplements; Mineral nutritional supplements; Mineral supplements; Natural herbal supplements; Natural supplements for treating candida; Natural supplements for treating depression and anxiety; Natural supplements for treating erectile dysfunction; Nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; Nutritional additives for medical purposes used in foods and dietary supplements for human consumption; Nutritional drink mix for use as a meal replacement; Nutritional drinks used for meal replacement; Nutritional food additives for medical purposes in the nature of natural food extracts derived from herb and animals; Nutritional food bars for use as a meal replacement; Nutritional meal replacement bars for individuals undergoing medical treatments; Nutritional shakes for use as a meal substitute; Nutritional supplement for eliminating toxins from the

body; Nutritional supplement for eliminating toxins from the intestinal tract; Nutritional supplement in the nature of a nutrient-dense, protein-based drink mix; Nutritional supplements; Nutritive additive to enhance fungi for purposes of pest management; Powdered fruit-flavored dietary supplement drink mix; Powdered nutritional supplement drink mix; Protein supplements; Vitamin and mineral supplements; Vitamin supplement in tablet form for use in making an effervescent beverage when added to water; Vitamin supplements; Weight management supplements

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2604841	Application Date	12/10/2001
Registration Date	08/06/2002	Foreign Priority Date	NONE
Word Mark	KYL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/03/08 First Use In Commerce: 2000/03/08 Dietary supplements, herbal supplements, herbal teas for medicinal purposes, vitamins, and vitamin supplements		

Related Proceedings	U.S. District Court Eastern District of New York, Case No. 1:10-cv-04948-DLI-JMA
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Attachments	76346329#TMSN.gif (1 page)(bytes) KYLNM602notice of opposition.pdf (6 pages)(213012 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Thomas J. Menard/
Name	Thomas J. Menard
Date	12/01/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Serial Number: 77/905,101

Mark: Y.L.L. (and design)

Publication Date: August 3, 2010

K.Y.L. Natural Health Products, Inc.)

Opposer,)

vs.)

Y.L.L. Highclass Healthy Products USA, Inc.)

Applicant.)

Opposition No. _____

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

K.Y.L. Natural Health Products, Inc. ("Opposer") believes it will be damaged by the registration of the mark shown in U.S. Trademark Application Serial No. 77/905,101 in International Class 5, and hereby opposes the same. As grounds for this opposition, it is alleged that:

1. Opposer, K.Y.L. Natural Health Products, Inc., is a New York corporation located at 252-75 Brattle Avenue, Little Neck, New York 11362, and maintaining a retail store at 41-38 Main Street, Flushing, New York 11355.

2. Upon information and belief, Applicant Y.L.L. Highclass Healthy Products USA, Inc. ("Applicant") is a New York corporation with its principal place of business at 148-14 35th Avenue, 2/FL, Flushing, New York 11354 and a retail store at 135-28 Roosevelt Avenue, Flushing, New York 11354.

3. Pursuant to the grant of a request for extension of time, the date by which a Notice of Opposition must be filed is December 1, 2010.

4. Applicant seeks to register the mark shown in **Exhibit A** in International Class 5 for the following goods, as evidenced by the publication of said mark on August 3, 2010:

Amino acids for nutritional purposes; dietary and nutritional supplements; dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; dietary food supplements; dietary supplement for eliminating toxins from the intestinal tract; dietary supplemental drinks; dietary supplemental drinks in the nature of vitamin and mineral beverages; dietary supplements; dietary supplements for controlling cholesterol; dietary supplements for human consumption; food supplements, namely, anti-oxidants; Health food supplements; herbal supplements; liquid nutritional supplement; meal replacement and dietary supplement drink mixes; mineral food supplements; mineral nutritional supplements; mineral supplements; natural herbal supplements; natural supplements for treating candida; natural supplements for treating depression and anxiety; natural supplements for treating erectile dysfunction; nutritional additives for medical purposes for use in foods and dietary supplements for human consumption; nutritional additives for medical purposes used in foods and dietary supplements for human consumption; nutritional drink mix for use as a meal replacement; nutritional drinks used for meal replacement; nutritional food additives for medical purposes in the nature of

natural food extracts derived from herb and animals; nutritional food bars for use as a meal replacement; nutritional meal replacement bars for individuals undergoing medical treatments; nutritional shakes for use as a meal substitute; nutritional supplement for eliminating toxins from the body; nutritional supplement for eliminating toxins from the intestinal tract; nutritional supplement in the nature of a nutrient-dense, protein-based drink mix; nutritional supplements; nutritive additive to enhance fungi for purposes of pest management; powdered fruit-flavored dietary supplement drink mix. powdered nutritional supplement drink mix; protein supplements; vitamin and mineral supplements; vitamin supplement in tablet form for use in making an effervescent beverage when added to water; vitamin supplements; weight management supplements.

5. Opposer is the owner of U.S. Trademark Registration No. 2,604,841 for the mark KYL (and design), as shown in **Exhibit B**; and Opposer has used that mark in connection with a variety of goods, including the following in International Class 5:

Dietary supplements, herbal supplements, herbal teas for medicinal purposes, vitamins, and vitamin supplements.

6. Opposer has continuously used the mark of U.S. Trademark Registration No. 2,604,841 since, at least, March 8, 2000.

7. Opposer's mark is incontestable under Section 15 of the Trademark Act, 15 U.S.C. §1065.

8. Applicant's mark is confusingly similar to Opposer's mark.

9. Applicant's use of the subject mark overlaps with the Opposer's use of its mark KYL and design for the following goods identified by Applicant in class 5:

Dietary supplements, herbal supplements, vitamins, and vitamin supplements.

10. Applicant's use of the subject mark for the following goods in class 5 encroaches on the natural zone of expansion of Opposer's use of its mark KYL and design with respect to the following goods:

Dietary beverage supplements for human consumption in liquid and dry mix form for therapeutic purposes; dietary food supplements, health food supplements; liquid nutritional supplement; meal replacement and dietary supplement drink mixes; mineral food supplements; mineral nutritional supplements; mineral supplements; natural herbal supplements; nutritional drink mix for use as a meal replacement; nutritional drinks used for meal replacement; nutritional food bars for use as a meal replacement; nutritional shakes for use as a meal substitute; nutritional supplements; powdered nutritional supplement drink mix; protein supplements; weight management supplements.

11. By virtue of Opposer's efforts and expenditures, and by virtue of the quality of Opposer's goods and services, its mark KYL and design has a valuable reputation and considerable goodwill.

12. Opposer's use of its KYL and design beginning March 8, 2000 and registration of the KYL and design mark on August 6, 2002 pre-date Applicant's priority date of January 5, 2010.

13. Opposer believes that use and registration of Applicant's design mark in the manner suggested would damage Opposer for the following reasons:

- a. Applicant's mark is confusingly similar to Opposer's KYL and design, as used in connection with its goods and services;
- b. Consumers would be and have been confused, mistaken, or deceived as to the source or association of goods bearing Applicant's mark; believing that Applicant's mark is associated

with Opposer's goods and services, rather than those of Applicant;

- c. Applicant's use and registration of the subject mark in the manner suggested would misrepresent the source of the goods and services;
- d. Applicant is deliberately and in bad faith using the subject mark on goods identical to Opposer's goods in combination with product names and trade dress that are calculated to create a substantially identical commercial impression to Opposer's goods.

14. By reason of the foregoing, Applicant is not entitled to registration under Sections 2 and 13 of the Lanham Act, 15 U.S.C. §§ 1052 and 1063, and Opposer would be damaged by said registration.

WHEREFORE, Opposer believes that it would be seriously damaged by said registration and respectfully requests that the Trademark Trial and Appeal Board sustain this Notice of Opposition to U.S. Trademark Application No. 77/905,101, and deny registration of the subject mark.

Respectfully Submitted,

K.Y.L. Natural Health Products, Inc.

By:



Thomas J. Menard
Reg. No. 42,877
Attorney for Opposer
Alix, Yale & Ristas, LLP

750 Main Street
Hartford, CT 06103
Tel: 860.527.9211
Fax: 860.527.5029
Email: tmenard@pctlaw.com;
email@pctlaw.com

CERTIFICATE OF ELECTRONIC FILING


I hereby certify that a copy of the foregoing Notice of Opposition was filed with the Trademark Trial and Appeal Board via the "Electronic System for Trademark Trials and Appeals" on the date below.

Signature: 
Thomas J. Menard

Date: 12.1.2010

CERTIFICATE OF SERVICE

I hereby certify that, on the date below, a true and complete copy of the foregoing Notice of Opposition has been deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Applicant's attorney as: "Ting Geng, Law Offices of Geng & Zhang PLLC, 39-07 Prince Street, Suite 3E, Flushing, NY 11354"

Signature: 
Thomas J. Menard

Date: 12.1.2010